

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

Federal-State Joint Conference on Accounting Issues)
Request for Comments) WC Docket 02-269

**COMMENTS OF THE
PUBLIC SERVICE COMMISSION OF WISCONSIN**

The Public Service Commission of Wisconsin ("Wisconsin Commission") respectfully files these comments in response to the December 12, 2002, request of the Federal-State Joint Conference on Accounting Issues.

Introduction

In 1999, the Federal Communications Commission ("FCC") initiated a two-phased comprehensive review of its accounting rules and the related reporting requirements for incumbent local exchange carriers ("ILECs") in an effort to keep pace with changing conditions in the competitive telecommunications industry. In Phase 1 (or "I"), which concluded with the *Phase I Report and Order*,¹ the FCC adopted Part 32 accounting rule changes and reporting reform measures for the Automated Reporting Management Information System ("ARMIS") that could be implemented quickly. After reviewing the issues and the accounting and reporting rules, the FCC realized that the comprehensive review required more than the two-phased process initially contemplated. In the Notice of Proposed Rulemaking ("NPRM"), adopted in the proceeding, the FCC commenced Phase 2 (or "II") to seek comment on further accounting and reporting

¹ Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 1, CC Docket No. 99-253, *Report and Order*, 15 FCC Rcd 8690 (2000) (*Phase I Report and Order*).

reform measures that may be implemented in the near term, and Phase 3 (or “III”) to consider the appropriate indicia for more significant deregulation in this area. On November 5, 2001, the FCC issued its *Phase II Accounting Order*² with further changes to its accounting and reporting rules. At the same time the FCC issued its *Phase III Further Notice*.³ Additionally, the FCC requested comments at a later date to refresh the record in those proceedings.

Recently, there has been increased public concern over the adequacy of financial accounting. On September 5, 2002, the FCC issued an Order convening a Federal-State Joint Conference on Accounting Issues (“Joint Conference”) to provide a means of evaluating whether regulatory accounting and reporting requirements are adequate and effective in the current market to both protect consumers and carry out federal and state regulatory responsibilities. Additionally, on November 12, 2002, the FCC suspended the implementation of certain requirements that were adopted in the *Phase II Accounting Order* to allow review of these changes by the Joint Conference.

On December 12, 2002, the Joint Conference issued a public notice in WC Docket 02-269 seeking comments regarding the *Phase II Accounting Order* and the *Phase III Further Notice* as well as additional questions regarding broader issues not yet addressed in the FCC’s three-phase proceeding.

² In the Matter of 2000 Biennial Regulatory Review--Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 2 (CC Docket No. 00-199), Amendments to the Uniform System of Accounts for Interconnection (CC Docket No. 97-212), Jurisdictional Separations Reform and Referral to the Federal-State Joint Board (CC Docket No. 80-286), and Local Competition and Broadband Reporting (CC Docket No. 99-301), Report and Order in CC Docket Nos. 00-199, 97-212, and 80-286, and Further Notice of Proposed Rulemaking in CC Docket Nos. 00-199, 99-301, and 80-286, adopted October 11, 2001, and released November 5, 2001. An errata order in these same dockets was adopted and released by the FCC on January 17, 2002, and January 18, 2002, respectively. An Order on Reconsideration in CC Docket No. 00-199 was adopted and released by the FCC on March 6, 2002, and March 8, 2002, respectively. On

Discussion

The Wisconsin Commission has previously filed comments in Phases I, II, and III of the FCC's comprehensive review proceeding as well as providing further Phase II and Phase III comments as requested. Additionally, on December 20, 2002, the Wisconsin Commission issued its Final Decision in docket 05-US-113, which considered revisions to the Wisconsin Commission's Uniform System of Accounts ("USOA") effective January 1, 2003, in light of the FCC's *Phase II Accounting Order*. The Wisconsin Commission's Final Decision also indefinitely suspended the items which the FCC suspended in its November 12, 2002, order.

The Wisconsin Commission submits these comments on the accounting and reporting issues from the Phase II and Phase III portion as well as some of the broader issues in this proceeding. The Wisconsin Commission will also describe selected items from its Final Decision.

General Comments on Accounting and Reporting Issues

As evidenced by the Wisconsin Commission's Final Decision in docket 05-US-113, the Wisconsin Commission recognized the importance of conforming the USOA utilized by this state commission to the USOA adopted by the FCC and has made only limited modifications between the two systems of accounts to limit the regulatory burdens on providers. The Wisconsin Commission agrees with the FCC that the focus of telecommunications regulation has changed over time, from an era primarily of rate-of-return regulation when the current Part 32⁴ USOA was initiated on January 1,

November 8 and 12, 2002, respectively, the FCC adopted and released an order in WC Docket No. 02-269 and CC Docket Nos. 00-199, 80-286, and 99-301.

³ *Ibid.*

⁴ Hereinafter references to Part 32 on sections herein are deemed to refer to 47 C.F.R. Part 32.

1988, to an environment focused on local competition, universal service, and deployment of advanced services. Likewise, regulation at the state level has changed over time from rate-of-return regulation to a mixture of rate-of-return, alternative, and price regulation. The Wisconsin Commission agrees that the USOA should periodically be revised to address changes in the marketplace and in technology. In prior comments, the Wisconsin Commission has supported eliminating many accounts and subaccounts no longer needed in today's changing regulatory environment, while also advising that the FCC consider adding new accounts as described therein. In light of the much-publicized telecommunications and other entities' financial record keeping events of the last year, the Wisconsin Commission shares the concern that reporting should be adequate, truthful, and thorough to support investor confidence in financial reporting.

In responding to the particular questions regarding the retention of specific accounts, the Wisconsin Commission cannot commit with certainty to whether it will conform with whatever decisions the FCC makes for these accounts. However, the Final Decision in docket 05-US-113 does provide some guidance in regard to the Wisconsin Commission's possible actions. The Wisconsin Commission determined that it has three hierarchies for possible levels of state accounting/reporting requirements. First, the Wisconsin Commission could establish different accounts/subaccounts or definitions than the FCC, but recognize that such a requirement would require ILECs to maintain a separate set of books and/or side records with corresponding costs. Second, in lieu of an account/subaccount requirement, the Wisconsin Commission could create an informal reporting requirement that the information should be reported in the ILEC annual report filed with the Wisconsin Commission. Third, the Wisconsin Commission could require

ILECs, in some instances, to retain certain information for a 6-year time period, in order that ILECs be able to respond in the future to data requests from the Wisconsin Commission.

Questions regarding retention or addition of particular accounts:

1. Whether the FCC should reinstate Account 5230 Directory revenues.

In its Phase II comments, the Wisconsin Commission supported retaining Account 5230. The Wisconsin Commission has retained this account for Class A ILECs because the FCC suspended its proposed deletion of this account in its November 12, 2002, order. The state of Wisconsin does have specific statutory requirements related to directory revenues as follows: “The commission may attribute revenues derived from the sale of directory advertising or directory publishing rights to the regulated activities of a telecommunications utility for rate making and other utility purposes.”⁵ Directory revenues are currently one of the largest components of the Miscellaneous Revenues category. Account 5230 is necessary for continued enforcement of Wis. Stat. § 196.204(2) concerning cross-subsidy. A data retention requirement was prescribed by the Wisconsin Commission for Class B ILECs⁶ in its docket 05-US-113 Final Decision. In light of its materiality and the Wisconsin Commission’s specific statutory requirements, the Wisconsin Commission would prefer that this account be reinstated.

⁵ Wis. Stat. § 196.204(2).

⁶ Class B ILECs are currently defined by the Wisconsin Commission in its prescribed USOA as ILECs that have or are affiliated with a holding company that has a combined total access lines in Wisconsin less than 50,000 access lines. This number of access lines is specified in Wis. Stat. § 196.01(8). Approximately 45 of the 80-plus ILECs in Wisconsin are currently classified as Class B, with the remainder classified as Class A.

2. Whether the FCC should reinstate the following Accounts:

- 6561 Depreciation Expense-Telephone Plant in Service*
- 6562 Depreciation Expense-Property Held for Future Telecommunications Use*
- 6563.1 Amortization Expense-Capital Leases*
- 6563.2 Amortization Expense-Leasehold Improvements*
- 6564 Amortization Expense-Intangible*
- 6565 Amortization Expense-Other*

In its Phase II comments, the Wisconsin Commission supported the retention of these accounts. The Wisconsin Commission has expressed concerns that transactions related to Property Held for Future Telecommunications Use remain separately identified in light of the different treatment in earnings monitoring and rate-of-return proceedings when they occur. In addition, determining depreciation rates remains a statutory requirement for the Wisconsin Commission. Per Wis. Stat. § 196.09(9),⁷ the Wisconsin Commission is required to revise depreciation rates for telecommunications utilities on a biennial basis. These rates have been used in proceedings to determine unbundled network element (“UNE”) rates. In its docket 05-US-113 Final Decision, the Wisconsin Commission decided that while the FCC USOA does not require maintenance of these accounts for Class B ILECs, this Commission would require Class B ILECs to report this information in the ILEC annual reports filed with the Wisconsin Commission. The Wisconsin Commission would prefer that these accounts be reinstated.

⁷ Wis. Stat. § 196.09(9) states:

- (a) 1. The commission shall create by order guidelines establishing classes of fixed capital that telecommunications utilities use for public utility purposes, a range of annual depreciation rates for each of those classes and a composite range of annual depreciation rates for all classes of fixed capital.
- 2. The commission shall review biennially the guidelines established under subd. 1., except that if the commission receives, more than 365 days before the deadline for a biennial review, a written request from a telecommunications utility for a review, the commission shall review the guidelines no later than 365 days after receiving the request.
- (b) The commission shall determine that an annual depreciation rate is just and reasonable if the rate falls within the range established for that class under par. (a) 1., if the composite annual depreciation rate falls

3. Whether the FCC should reconsider consolidation of Accounts 6621 through 6623 into Account 6620 (Services) and the creation of wholesale and retail subaccounts to the newly consolidated account, as is currently required in the Phase II Order.

In its Phase II comments, the Wisconsin Commission supported the consolidation and creation of new retail and wholesale subaccounts. As the FCC has suspended the consolidation of the accounts in its November 12, 2002, order, the Wisconsin Commission has retained Accounts 6621 through 6623. Consolidation and creation of wholesale and retail subaccounts would provide useful information that will be needed on an ongoing basis in light of the requirements of the Telecommunications Act of 1996. This information is needed to determine the appropriate discount based on avoided retail costs for setting resale rates, and the appropriate mark-up for joint and common costs in determining the rates for UNEs.

The appropriate definitions of retail, joint, and common costs may not be well enough established at this time to be codified into account descriptions needed to create new accounts. As an example, in the SBC (Wisconsin) UNE pricing docket (Wisconsin Commission docket 6720-TI-161), in order to determine the wholesale mark-up, the Wisconsin Commission found that it needed information regarding what costs were directly related to the provisioning of wholesale service and what costs were competition implementation costs. The Wisconsin Commission considered that costs that were incurred in contentious proceedings regarding product definitions necessary to comply

within the composite range established under par. (a) 1. for all classes of fixed capital or if the commission previously determined that the rate is just and reasonable.

(c) A telecommunications utility may implement an annual composite depreciation rate, for all classes of fixed capital that is outside the range established under par. (a) 1. by filing the rate with the commission. The proposed annual composite depreciation rate shall be effective on the date specified in the filing but not sooner than 90 days from the date of filing with the commission, unless any of the following occurs:

1. During the 90-day period the commission determines that the rate is not just and reasonable or in the public interest.
2. The commission directs that the depreciation rate be made effective at an earlier date.

with the FCC rules were competition implementation costs. SBC had proposed such costs should be borne solely by wholesale customers as joint costs. The Wisconsin Commission determined these costs should be considered common costs and shared by all users of the network. If new accounts are not established, there will, in the future, be a continuing need for extensive information to be obtained through data requests.

Additionally, the development of UNE rates may not be handled consistently throughout the country.

4. Whether the FCC should reconsider changing the title “Sheath Kilometer” to “Loop Sheath Kilometer” on the Table II of the ARMIS 43-07 report, as is currently required in the Phase II Order.

While the Wisconsin Commission has not previously commented on this issue, it notes that it currently obtains total fiber optic sheath miles information from ILECs in the ILEC annual report filed with the Wisconsin Commission. Loop Sheath Kilometer information may be more relevant to determining the costs of providing local service, but total Sheath Kilometer information may also have some merit in that it identifies the infrastructure for loop and interoffice, combined, for a particular ILEC. The FCC may wish to consider supplementation of the Loop Sheath Kilometer reporting requirement with the former Sheath Kilometer reporting requirement in the ARMIS 43-07 report.

5. Whether the FCC should reconsider any of the changes to the affiliate transaction rules that were adopted in the Phase II Order.

In its docket 05-US-113 Final Decision, the Wisconsin Commission adopted the FCC’s Part 32.27 rules with two exceptions: 1) it did not adopt Part 32.27(f) which exempts average schedule companies from cross-subsidy rules; and 2) it adopted a \$100,000 threshold for requiring lower of cost or fair market value (LOCOM)/higher of

cost or fair market value (HOCOM) studies for ILECs other than SBC and Verizon in lieu of the FCC's \$500,000 threshold for such studies which the Wisconsin Commission applied to SBC and Verizon. The Wisconsin Commission's cross-subsidy authority includes the enforcement of Wis. Stat. § 196.204⁸ requiring that a telecommunications utility may not, except for retained earnings, subsidize nonregulated activities including those of an affiliate. The Wisconsin Commission also has supervisory jurisdiction over telecommunications affiliated interest agreements pursuant to Wis. Stat. § 196.52(5)(b)⁹ as well as enforcement authority under Wis. Stat. § 196.219¹⁰ for violations of Wis. Stat.

⁸ Wis. Stat. § 196.204 states in part:

- (1) Except for retained earnings, a telecommunications utility may not subsidize, directly or indirectly, any activity, including any activity of an affiliate, which is not subject to this chapter or is subject to this chapter under s. 196.194, 196.195, 196.202 or 196.203. No telecommunications utility may allocate any costs or expenses in a manner which would subsidize any activity which is not subject to this chapter or is subject to this chapter under s. 196.194, 196.195, 196.202 or 196.203. Except as provided in subs. (2) and (4) the commission may not allocate any revenue or expense so that a portion of a telecommunications utility's business which is fully regulated under this chapter is subsidized by any activity which is not regulated under this chapter or is partially deregulated under s. 196.194, 196.195, 196.202 or 196.203.
- (2) The commission may attribute revenues derived from the sale of directory advertising or directory publishing rights to the regulated activities of a telecommunications utility for rate making and other utility purposes.
- (3) The commission shall establish the necessary minimum accounting and reporting requirements, and structural separation requirements if necessary, for telecommunications utilities to enable it to enforce this section. For a telecommunications utility regulated under s. 196.195 or 196.196, these requirements shall at a minimum include the filing of cost support documentation demonstrating compliance with subs. (5) and (6) before the effective date of each new service, including any unbundled service element or basic network function; before any reduction in the price of a service offered to end users; and before any increase in the price of a service offered to other telecommunications providers. The commission, on its own motion or upon complaint, may order any telecommunications utility to file cost support documentation showing that a service that the utility offers or a contract that the utility has entered into under s. 196.194 complies with subs. (5) and (6).
- (4) In order to protect the public interest, the commission may allocate the earnings derived from sale of services partially deregulated under s. 196.195, 196.202 or 196.203 to the fully regulated activities of a telecommunications utility for rate-making purposes.

⁹ Wis. Stat. § 196.52(5)(b) states:

- (b) For telecommunications utilities, the commission shall have supervisory jurisdiction over the terms and conditions of contracts and arrangements under this section as necessary to enforce ss. 196.204 and 196.219.

¹⁰ Wis. Stat. § 196.219 states in part:

- (3) Prohibited practices. A telecommunications utility with respect to its regulated services or any other telecommunications provider with respect to its offering of local exchange services may not do any of the following:

...

- (g) Provide services, products or facilities in violation of s. 196.204.

§ 196.204. The Wisconsin Commission has expended considerable resources in investigating cross-subsidization complaints under its jurisdiction. Each change in the FCC's rules has been carefully evaluated to ensure the Wisconsin Commission will be able to perform its statutory duties. The Wisconsin Commission did not adopt the FCC's average schedule exemption because average schedule companies are not exempt from the above statutory requirements. If the Wisconsin Commission had adopted the \$500,000 threshold for LOCOM/HOCOM studies as the threshold for all ILECs in Wisconsin, it would have effectively mooted compliance and enforcement for the vast majority of Wisconsin's ILECs, including some with relatively few access lines. The FCC should be cognizant that cross-subsidy remains an important component of regulation at the state level, and that any further FCC changes to affiliate transaction rules will be carefully evaluated by the Wisconsin Commission, and may or may not be adopted in whole or in part.

6. *Whether any accounts should be added to the USOA, including:*

Optical Switching

Switching Software

Loop and Interoffice Transport

Interconnection-Revenue (with subaccounts for UNEs, Resale, Reciprocal Compensation, and Other Interconnection Arrangements)

Interconnection-Expenses (with subaccounts for UNEs, Resale, Reciprocal Compensation, and Other Interconnection Arrangements)

Universal Service Support Revenue

Universal Service Support Expense

In its Phase II comments, the Wisconsin Commission supported the creation of new plant, revenue, and expense accounts. In its docket 05-US-113 Final Decision, the

(h) To the extent prohibited by the federal communications commission, or by the public service commission under rules promulgated consistent with the factors under s. 196.03 (6), give preference or discriminate in the provision of services, products or facilities to an affiliate, or to the telecommunications utility's or provider's own or an affiliate's retail department that sells to consumers.

Wisconsin Commission adopted a 6-year data retention requirement for selected revenue accounts. The Wisconsin Commission also adopted separate reporting in its ILEC annual report for selected revenue items to the extent necessary to allow the identification of assessable revenues for remainder, intrastate telephone relay, and intrastate universal service fund (“USF”) assessments, and for other items to perform small ILEC equity-thin and earnings reviews. The Wisconsin Commission further stated that while it did not adopt additional expense accounts at this time, such proposals may include worthwhile goals and that its current decision in docket 05-US-113 did not preclude the Wisconsin Commission from pursuit of these issues at a later date or in another forum, such as in comments filed with the FCC.

The Wisconsin Commission supported the creation of an Optical Switching account in its Phase II comments, as it would provide data regarding the extent of deployment of advanced services. There may also be future concerns concerning depreciation rates associated with such new technologies.

With regard to the issue of a separate account(s) for Switching Software, such requirement could extend to both plant and expense accounts, in that some switching software is capitalized while some is expensed. Prior to classification of switching software in account 2690, Intangibles, the Wisconsin Commission prescribed a distinct depreciation rate for switching software. The magnitude of the switching software recorded in account 2690 and/or expensed by respective ILECs may warrant consideration of a separate account or subaccount for this item.

The Wisconsin Commission did previously comment on traffic sensitive versus nontraffic sensitive costs. Since that time the Commission found in the SBC UNE

pricing docket that the determination of traffic sensitive versus nontraffic sensitive may vary from company to company based on the manner in which a particular company incurs its costs. Based on SBC's switching contracts, the Wisconsin Commission decided to flat rate unbundled local switching for the company. Accordingly, traffic sensitive versus non-traffic sensitive distinctions would probably not be adequately captured in account descriptions.

With regard to Loop and Interoffice Transport, the Wisconsin Commission did not find that it needed accounting data to determine unbundled local loops or unbundled local transport rates in the SBC UNE pricing docket. Contract prices and model algorithms were primarily inputs that were needed to determine compliance with Total Element Long Run Incremental Cost ("TELRIC") pricing standards. However, to the extent ILECs claim that the rates for UNEs as developed from these models do not cover their accounting costs, they would need data separating loop costs from transport costs to make comparisons to accounting costs. Other adjustments, such as computing levelized costs like annual lease payments, instead of return and depreciation costs, would be needed to make comparisons between TELRIC UNE rates and accounting data. Additionally, if it was ever decided to create separate wholesale and retail companies, separate data for loop versus transport costs may be needed to develop transfer prices.

With regard to Interconnection Revenue subaccounts (UNEs, Resale, Reciprocal Compensation, and Other Interconnection Arrangements), the Wisconsin Commission has had the following experiences. The Wisconsin Commission reclassified UNE and collocation revenues from miscellaneous revenues to local revenues in a recent rate case

for a CenturyTel company.¹¹ Properly classifying revenues as either local telecommunications service revenues or miscellaneous revenues is an important aspect of computing assessable revenues and resulting assessments administered by the Wisconsin Commission. Having a mix of telecommunications service revenues and nontelecommunications service revenues in the Miscellaneous Revenue category creates a need for collection of additional information for purposes of computing assessable revenues for the Wisconsin Commission's remainder and intrastate telephone relay assessments, on the one hand, and the intrastate USF assessments, on the other hand. The Wisconsin Commission also gathers assessable revenue information from other telecommunications providers, including competitive local exchange carriers, via annual report filings.

In its Phase I comments, the Wisconsin Commission pointed out that pursuant to the last rewrite of the USOA, it has been the goal of the FCC to rely on the same database utilized by management rather than relying on data generated solely for submission to a regulatory agency. Accordingly, in evaluating whether to add revenue accounts it is reasonable to look at the kind of information ILEC management has available. SBC recently provided separate reporting on revenues from UNE-P sold to CLECs and revenue from unbundled loops sold to CLECs. Sources of revenue appear to be one of the more important issues in monitoring the transition to a competitive marketplace. The Wisconsin Commission would prefer greater detail than the Miscellaneous Revenue category provides.

¹¹ Final Decision in dockets 2055-TR-102 and 5846-TR-102, dated September 24, 2002, concerning CenturyTel of Central Wisconsin, LLC, and Telephone USA of Wisconsin, LLC. The UNE and collocation revenue reclassification pertained to Telephone USA of Wisconsin, LLC.

Concerning Interconnection Expense subaccounts (UNEs, Resale, Reciprocal Compensation, and Other Interconnection Arrangements), the Wisconsin Commission, in its 05-US-113 Final Decision, did not impose any reporting or data retention requirements for additional expense accounts. Where the USOA is applicable to ILECs, it is not likely that an ILEC will buy unbundled access to a CLEC's network or resell a CLEC's services. Additionally, an ILEC is not likely to collocate in a CLEC's central office. Generally, the expenses associated with providing telecommunications services are joint expenses that are allocated between state and interstate jurisdictions, and regulated and nonregulated activity and cannot be directly assigned to a particular service. The one additional Interconnection Expense that appears to be relevant to ILECs is reciprocal compensation. The current USOA appears to support classification of reciprocal compensation expense in account 6540, Access Expense. Reciprocal compensation is an expense associated with local service, whereas access expenses are not related to local service. The Wisconsin Commission would prefer a separate account or subaccount for an ILEC's reciprocal compensation paid to other entities. In addition, if the USOA is to be applied to non-ILECs, the FCC may wish to consider adoption of separate accounts or subaccounts for the other interconnection expense items.

Concerning Universal Service Support Revenues and Universal Service Support Expenses, the Wisconsin Commission supported the creation of new accounts in its Phase II comments. The Wisconsin Commission has not, in its currently-adopted USOA, required additional accounts or subaccounts, reporting requirements in the ILEC annual report, or additional data retention requirements concerning these items. However, as universal service funds expand in order to make implicit subsidies explicit in nature,

information in this area may increase in importance. The Wisconsin Commission is not requesting separate accounts/subaccounts for USF-related activity at this time.

7. Whether the FCC should reconsider any other Phase II adopted changes.

The FCC should establish differing USOA thresholds for Class A and Class B ILECs, respectively, to recognize the wide-ranging size of ILECs across the country. In several areas of the USOA, the Wisconsin Commission has adopted differing dollar thresholds or provisions to recognize the diversity in size of the 80-plus ILECs in the state of Wisconsin. Several examples are:

- In section 32.2000(a)(4) concerning instructions for telecommunications plant accounts, Class B ILECs requested, and the Wisconsin Commission granted, continuation of the option to capitalize general support assets costing between \$500 to \$2,000 provided that verifiable inventory records are maintained.
- In section 32.16 of the Wisconsin Commission's USOA, the Wisconsin Commission adopted differing dollar thresholds for SBC and Verizon versus other ILECs concerning notification of matters of significance.
- In section 32.25, Unusual Items and Contingent Liabilities, the Wisconsin Commission, as with section 32.16, adopted differing dollar thresholds for SBC and Verizon versus other ILECs concerning preapproval for corrections of errors.

In general, the Wisconsin Commission believes that differing dollar thresholds for the 80-plus ILECs recognize the wide-ranging sizes of the ILECs conducting business in

the state of Wisconsin, and assign a relative level of importance for each provision to the respective ILECs.

The FCC inquires in the broader issues section: “What is the impact of any proposed changes to any accounting requirements on local exchange carriers with fewer than 2 percent of the Nation’s subscriber lines installed in the aggregate nationwide.” Capitalization (and expensing) policies within the prescribed USOA may influence the level of plant investment recorded on an ILEC’s books and indirectly increase or decrease cash flows from universal service support. One noteworthy difference between large Class A and smaller ILECs is the manner in which universal service support is provided. Generally, smaller ILECs are the rural ILECs for which the universal service support is based on modified embedded costs which could be affected by further changes in USOA capitalization policies. However, for large Class A ILECs, generally nonrural companies, universal service support has been based on forward-looking cost models and would be unaffected by such changes.

Smaller ILECs are also more likely to be subject to traditional rate-of-return regulation, for which the distinctions reflected in existing accounts are still relevant. Further reductions to USOA-prescribed accounts should not be entertained without a complete evaluation of the impacts on ILECs, especially smaller rate-of-return ILECs.

Broader Issues

In addition to the questions regarding specific accounts, the FCC also seeks comments on broader issues related to the topics of whether accounting data and related information are adequate, truthful, and thorough. These comments group similar

questions together into two categories: (1) Questions about the role of regulatory accounting; and (2) Questions about additional possible actions or additional information.

(1) Questions about the role of regulatory accounting.

The request for comments lists many purposes for accounting including taxation, public company financial disclosure, and corporate planning. It also lists a number of different governmental oversight bodies: Securities and Exchange Commission, Federal Energy Regulatory Commission, Federal Trade Commission, Department of Justice, State Attorneys General, and Secretaries of State. The comments also inquire whether the FCC has authority to maintain accounts used solely by the states. The Wisconsin Commission is concerned about both the cost and the benefits of having differences between its USOA and financial reporting requirements of other government and standard setting bodies. Conformity in reporting between the multiple users of financial information is efficient and reduces costs.¹² There are far more similarities in the needs for financial information among the various governmental bodies than there are differences. However, certain areas are of greater concern to telecommunications regulators than other government entities. Those discussed in these comments include cross-subsidy, depreciation, universal service support, jurisdictional separations, monitoring deployment of advanced technology, supporting UNE, resale and retail prices, and assessments.

The FCC will help minimize costs for the entire industry, a benefit to all telecommunications consumers, if it maintains a system of accounts that reflects the needs of both federal and state telecommunications industry regulators. To the extent

¹² However, the Wisconsin Commission's regulatory need to enforce its Wisconsin statutory jurisdiction is paramount to conformity and may warrant departure from other agencies' requirements.

that the Wisconsin Commission must perform its statutory duties, it may establish its own accounts/subaccounts, reporting, and/or data retention requirements. The Wisconsin Commission has previously commented that the FCC should recognize that eliminating accounts or the entire USOA at a future date simply because the FCC believes it is not required for federal purposes may result in the elimination of the word “uniform” in the acronym USOA. The degree of disparity between accounts and reporting by various state commissions would likely be greater if there was not a federal USOA to rely on.

Indeed, the Wisconsin Commission does not believe that there are many accounts “used solely by the states,” because the distinction between state and federal jurisdiction has been thoroughly mixed. Under the 1996 Act, the states are “‘deputized’ federal regulator[s],” given the “gratuity [of] federal regulatory power.” *MCI Telecommunications Corp. v. Illinois Bell Tel. Co.*, 222 F.3d 323, 344 (7th Cir. 2000). If the FCC assumes under § 252(e)(5), a state’s responsibility to arbitrate and approve an interconnection agreement, the ILEC accounts required by the state commission could be a critical source of information for the FCC to decide costing issues presented in the arbitration. The analogy here is that of a supervising sheriff and his deputies on patrol. It would be a harm for the sheriff, because he is not doing the frontline law enforcement, to conclude that his deputies do not need guns and ammunition. Similarly, USOA account data are the “guns and ammunition” for the deputized states out there enforcing the federal sheriff’s 1996 Act. It would be a mistake to conclude, without thorough and specific justification, that a particular account is used “solely by the states.”

(2) Questions about additional possible actions or additional information.

The request for comments ask whether additional accounting and reporting requirements not contemplated in the Phase I or Phase II Orders are necessary to support current regulatory efforts; whether the FCC and/or the states should increase their financial monitoring of any telecommunications carriers including competitive carriers; whether additional accounting requirements are needed in order to prevent financial problems of affiliates threatening the financial viability of telecommunications carriers or to enable state and federal regulators to make better assessment of the consequences of mergers; and, whether the FCC and/or states should increase the use of audits, including potentially joint federal/state audits to ensure consistency or otherwise fulfill their regulatory mandate to protect consumers and ensure the integrity of the telecommunications network.

The Wisconsin Commission shares this concern regarding accuracy of financial reporting and access to capital markets for all providers in the telecommunications industry. In considering the types of actions a regulator might take, these comments will describe the legislative trade offs reflected in Wisconsin's telecommunications competition legislation enacted in 1994. The 1993 Wisconsin Act 496 removed the Wisconsin Commission's authority to preapprove mergers, security issuances and affiliate transactions. Instead the Wisconsin Commission's role concerning telecommunications affiliated interest transactions was changed to one of supervisory jurisdiction over affiliated interests as necessary to enforce cross-subsidy and discrimination matters. Associated means of enforcement include establishing accounting and reporting requirements, and even imposing structural separation

requirements if necessary.¹³ Additionally, the Wisconsin Commission's role concerning capital structure was changed to one of supervisory jurisdiction. If the Wisconsin Commission determines that an ILEC's capital has been impaired, it can order dividend restrictions.¹⁴ This combination of duties and enforcement powers provides a new regulatory framework in lieu of prior rate-of-return regulation and Wisconsin Commission preapproval of these types of transactions.

The Wisconsin Commission continues to evaluate whether it has sufficient, adequate, and thorough information to perform these duties, especially in the area of monitoring capital structure. There is a particular concern in the area of off-balance sheet financing. The Wisconsin Commission will monitor the progress of the Securities and Exchange Commission's implementation of the requirements of the Sarbanes-Oxley Public Company Accounting Reform and Investor Protection Act. If sufficient actions are not taken to disclose off-balance sheet financing, this Commission does have the authority to implement its own accounting requirements.

With regard to the possibility of joint federal/state audits, the Wisconsin Commission has previously been, and continues to be, supportive of such joint efforts. Such joint efforts are mutually beneficial and provide a good avenue of communication between and among federal and state regulators. The Wisconsin Commission has participated in past joint audits and will continue to do so to the extent it can allocate time and resources to these projects.

Conclusion

¹³ Wis. Stat. § 196.204(3).

¹⁴ Wis. Stat. § 210.15.

The Wisconsin Commission thanks the Joint Conference for this opportunity to provide its input on these very important issues. Cooperative federalism imposes a need for full and careful regard for the entire framework for development of competition as put in place by the Congress and state legislatures. The USOA is critical informational “glue” that helps make the cooperation workable. The needs and concerns of all stakeholders should be carefully evaluated as the FCC determines whether any additional modifications are necessary to the uniform system of accounts.

Dated at Madison, Wisconsin, January 30, 2003

By the Commission:

/s/ Lynda L. Dorr

Lynda L. Dorr
Secretary to the Commission

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